**Discuss the differences between statute law and common law, and explain the role of the Common Law system in interpreting Statute law. Incorporate examples and legal evidence where appropriate.**

The legal system of Australia is situated on the central belief in the rule of law, justice and the independence of the judiciary, which protects and ensures the impartial treatment of people through the use of laws. Laws are made by the federal and state parliaments, which is then interpreted and adapted by a judiciary. However, if there are no relevant laws existing in relation to a case presented in court, a judge and/or magistrate would create judge made laws through court rulings.

The law is categorised into two sections: Common law and Statute Law. A common law is a collection of legal principles and rules derived from the decisions of judges formed in higher courts, which involves ratio decidendi (the legal principles) and precedents (decisions made). However, a statute law is a law created and passed by the government through parliament, and is also known as legislation. There are both positive and negative aspects of common and statute laws. Common and statute laws are coexistent and interact with each other, in which they are interpreted in a way that statute law makes up for what common law is lacking. Statute law may be outdated, so they are amended in order to reflect common decisions. Even though common law can be overridden by statute law, when there is a lack of legislative law in a case, common law is created to fill in what is missing.

Due to judges making decisions on cases based on precedent, they are able to identify weaknesses and irregularities in existing laws, and are able to indicated needed change, thus being enabled to scrutinise existing law. With the scrutiny of existing law, laws are changed to make up what is lacking or outdated, and be able to reflect community decisions and values. This is exemplified with the Case: “Mabo vs. Queensland [No.2] 1992 (Cth)”, where the High Court ruled in favour of the common law doctrine of the Aboriginal title over the doctrine of Terra Nullius as in those circumstances, Terra Nullius was not valid, and therefore Native Title could exist. The rejection of Terra Nullius was justified with the recognising of the pre-existing system of law that the indigenous population had, and that it would remain in force under the new sovereign unless where specifically modified by legislative action. Native title existed wherever Indigenous people had occupied the land prior to European settlement, providing that the government had not officially transferred the ownership of the land. With this, the laws of the original inhabitants of the land was recognised and existed. The common law of native title had established the exceptions to the existing doctrine of terra nullius, adjusting to the values of the communities and creating a peaceful environment.

With the common law being able to effectively scrutinise the existing laws, the same can’t be implied with statute law. With parliaments being busy with day-to-day activities, they may not be able to examine existing statute law due to time constraints. Not being able to identify if existing statute laws are in need of change could cause a detrimental effect on the legal system and anybody involved with it. If statute laws are really in need of a change but parliaments don’t have the time to examine it, injustices would transpire and as a result, a state of disorder may occur within the community.

The judges of the legal system are appointed, and are difficult to remove from office. With judges only having to rely on their own principles and powers while making decisions, it is possible that the common laws made may not be beneficial to the legal system, and may only reflect the views of a minority. However, with the parliamentarians who create statute laws, they are able to conduct lengthy and valuable research to make decisions about laws. With the heaped valuable information of research, the laws created are able to be explained into more detail and be further understood by everybody. Also, with the parliamentarians being able to be democratically elected or voted out, the community experiences laws that relate to a wider range of groups.

With statute law being able to adapt and respond to changing circumstances, the statute laws in our legal system today is more likely to be useful to today’s society, especially when large areas of the law can be altered in one statute. Statute laws can be constructed and altered at any time without the use of court cases, which makes the adjustment of certain laws straightforward, yet it may create instabilities within the legal system since laws can be constantly altered depending on which party is in power. Within common law, laws can be slow to change since a case is needed for judges to be able to make decisions. With judges having to follow precedent and decisions made in cases before them, only isolated areas of the laws may change. Despite judges only being able to make decisions when cases are presented before them, it also means that a decision must be made. Issues cannot be avoided with common law, whereas in statute law it can.

The Common Law system is also used to interpret Statute law to incorporate sufficient understanding to better understand the law, where judges establish a legal precedent to define the certain words of phrases of the Statute law when it is vague. A situation related to the interpretation of Statute law arose in 1971 with ‘the Levine ruling’ relating to the New South Wales Abortion Law, in which Judge Levine had developed a precedent in his ruling on the definition of lawful in Legislation: “Crimes Act 1900 (NSW)” (ss 82, 83 and 84). The sections of the legislation had stated that abortion is a crime when any drug or noxious thing is ‘unlawfully’ administered or supplied, but it had not defined what is unlawful or what is lawful. This in turn enabled Judge Levine to clarify the situation by creating the precedent in the ruling of the definition of lawful, thus making abortion decriminalised. His judgement had been affirmed and is followed by the courts in New South Wales. This therefore, is an example of how common law can be used to define statutory law in which it further completes the definition of it. In Legislation: “Crimes Act 1958 (VIC)” (sect 76), it states that a person is guilty of burglary if they enter any building or a part of a building as a trespasser with intent to steal something or commit a crime. This is another example of the interpretation of Statute law, where the definition of a building is not specified. This leaves the court to decide what is considered a building and what isn’t. With these, the interpretation of the Statute Law through the Common Law system clarifies the Statute law and its meanings, enabling people to further understand it.

The uses of common law, its system and statute law target different aspects within the legal system. With society evolving, laws made and adapted by both parliament and judges evolve to suit the changing community. With the positives and negatives of both common and statute law nullifying each other and the common law system being used to further interpret law, the laws help protect an individual’s rights and ensure equality within people and their communities.

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